

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

|                           |   |                              |
|---------------------------|---|------------------------------|
| WILSON THOMAS,            | ) | No. CV-F-04-6666 OWW         |
|                           | ) | (No. CR-F-98-5022 OWW)       |
|                           | ) |                              |
| Petitioner,               | ) | MEMORANDUM DECISION AND      |
|                           | ) | ORDER DISMISSING             |
| vs.                       | ) | PETITIONER'S MOTION TO       |
|                           | ) | VACATE, SET ASIDE OR CORRECT |
|                           | ) | SENTENCE PURSUANT TO 28      |
| UNITED STATES OF AMERICA, | ) | U.S.C. § 2255 (Doc. 216) AND |
|                           | ) | DIRECTING CLERK OF COURT TO  |
|                           | ) | ENTER JUDGMENT FOR           |
| Respondent.               | ) | RESPONDENT                   |
|                           | ) |                              |
|                           | ) |                              |

On November 22, 2004, Petitioner Wilson Thomas submitted a pleading to the Ninth Circuit Court of Appeals, captioned: "Petition for Rehearing En Banc or Motion for Stay of Mandate Pursuant to Under Write [sic] of Habeas Corpus Pursuant to Title 28 U.S.C.A. § 2255, To Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody." Attached to the Petition submitted to the Ninth Circuit is a copy of a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 and a memorandum

1 of points and authorities in support of the Section 2255 motion.  
2 A copy of the docket in *Wilson Thomas v. United States*, No. CV-F-  
3 01-6614 OWW is placed in the file with the handwritten notation:  
4 "Should this go to DC? Should dc send this case up?" There is  
5 also a handwritten notation:

6 I think this belongs to your Court. It  
7 appears that the 9<sup>th</sup> Cir. has nothing for  
8 this person. Maybe this can be treated as  
9 his NoA. CoA has already been denied.

10 Thereafter, the Petition was filed in the Eastern District of  
11 California and assigned Case No. CV-F-04-6666 OWW (Doc. 216).

12 Petitioner filed a motion to vacate, set aside or correct  
13 sentence on December 28, 2001, which motion was assigned Case No.  
14 CV-F-01-6614. By Order filed on September 8, 2004, Petitioner's  
15 Section 2255 motion was denied as untimely. (Doc. 214) A  
16 Certificate of Appealability was denied by Order filed on  
17 September 8, 2004. (Doc. 215). Petitioner filed a Notice of  
18 Appeal on November 22, 2004. (Doc. 217). This Notice of Appeal  
19 is identical to the Petition for Rehearing En Banc, etc.  
20 According to a notation on the District Court docket entry for  
21 the Notice of Appeal: "[NOTE: Document was not entitled 'Notice  
22 of Appeal' was never construed as such. On 3/10/06 the 9<sup>th</sup>  
23 Circuit now says this is in fact an Appeal and needs to be worked  
24 up." (Doc. 217). On March 16, 2006, the appeal was processed  
25 and the record transmitted to the Ninth Circuit. (Docs. 218-  
26 219). Ninth Circuit Case No. 06-15521 was assigned to the  
appeal. (Doc. 220). On June 23, 2006, filed with the District

1 Court on July 5, 2006, the appeal of the denial of the Section  
2 2255 motion was dismissed, the Ninth Circuit declining to issue a  
3 Certificate of Appealability. (Doc. 222).

4 This action is DISMISSED. Case No. CV-F-04-6666 OWW was  
5 opened in error. It is apparent from the record that Petitioner  
6 did not file a Section 2255 motion on November 22, 2004; rather,  
7 the Petition for Rehearing En Banc, etc. was a Notice of Appeal  
8 to the Ninth Circuit from the denial of the Section 2255 motion  
9 in Case No. CV-F-01-6614 OWW.

10 For the reasons stated:

11 1. This action is DISMISSED.

12 2. The Clerk of the Court is directed to enter JUDGMENT FOR  
13 RESPONDENT.

14 IT IS SO ORDERED.

15 Dated: August 4, 2008

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE